

APPEAL NO. 010751

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 30, 2001. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____; that the appellant (carrier) is not relieved of liability under Section 409.002 because the claimant timely notified his employer of the injury; and that the claimant had disability from September 3 to November 27, 2000, due to his compensable injury. The carrier appealed. The claimant did not file a response.

DECISION

Affirmed in part and reversed and rendered in part.

The hearing officer did not err in finding that on _____, the claimant injured his back lifting and moving a sofa as part of his job duties for the employer and in concluding that the claimant sustained a compensable injury on _____. The hearing officer judges the weight and credibility of the evidence. Section 410.165(a). The hearing officer's decision that the claimant sustained a compensable back injury is supported by the claimant's testimony and medical reports and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer did not err in finding that the claimant reported his injury of _____, to his supervisor on August 17, 2000; in concluding that the claimant timely notified his employer of his injury pursuant to Section 409.001 (which requires notice within 30 days of the injury); and in concluding that the carrier is not relieved of liability under Section 409.002. Conflicting evidence was presented on the notice issue. The claimant testified that he notified his supervisor of the work-related back injury on August 17, 2000, and the supervisor denied having received notice. As the trier of fact, the hearing officer resolves the conflicts in the evidence. The hearing officer's decision that the claimant timely notified his employer of his injury is supported by the claimant's testimony and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer did not err in determining that the claimant had disability from September 3 through November 27, 2000. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The hearing officer resolved the conflicting evidence on the disability issue in favor of the claimant. The reason for the claimant's termination from employment on August 31, 2000, is unclear because the claimant indicated that the firing was due to a claimed falsification of documents, but also said that it was due to all of his "problems." The claimant also indicated that he was unable to work from September 3 to November 27, 2000, because of his back pain from his injury at work, and the medical records reflect treatment during that period for back pain from the compensable injury. The

hearing officer's decision on the disability issue is supported by the claimant's testimony and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

Finding of Fact No. 4 states, in part, that the claimant sustained high blood pressure due to the stress occasioned by the _____, injury. It appears from this finding that the hearing officer may be attempting to find that the claimant's high blood pressure is part of his compensable injury, and to the extent that Finding of Fact No. 4 attempts to make the claimant's high blood pressure part of his compensable injury, it is in error. The claimant testified that a doctor told him that his high blood pressure is due to his back pain and the claimant asserted that his high blood pressure is part of his compensable injury. Section 401.011(26) defines "injury" as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Whether high blood pressure would naturally result from a back injury is not a subject of common knowledge and thus expert evidence based on reasonable medical probability is required to establish a causal connection between the back injury and the high blood pressure. Texas Workers' Compensation Commission Appeal No. 960753, decided May 30, 1996.

The only medical report that addresses the cause of the claimant's high blood pressure is the December 1, 2000, report of the claimant's treating doctor, Dr. S, and in that report Dr. S states that the claimant's high blood pressure is due to stress from being fired and from the carrier giving the claimant a hard time regarding treatment and medications. Dr. S does not indicate that the high blood pressure naturally resulted from the compensable back injury. In Texas Workers' Compensation Commission Appeal No. 961127, decided July 8, 1996, the Appeals Panel stated that stress related to disputes in the claims process does not per se make such stress part of the compensable injury. In Texas Workers' Compensation Commission Appeal No. 92189, decided June 25, 1992, the Appeals Panel noted that in Marsh v. Travelers Indemnity Company of Rhode Island, 788 S.W.2d 720, 721 (Tex. App.-El Paso, writ denied), the court stated that "disappointment in job expectations, worry and anxiety over job loss, failure to be promoted, and the like have long fallen outside the ambit of 'injury sustained in the course of employment' simply because such emotional or mental states are not connected with the employer's business." That portion of Finding of Fact No. 4 that may attempt to make the claimant's high blood pressure part of the compensable injury is not supported by the evidence and is against the great weight and preponderance of the evidence.

We affirm the hearing officer's decision that the claimant sustained a compensable back injury, that the claimant gave timely notice of injury to his employer, and that the claimant had disability from September 3 to November 27, 2000. That portion of Finding of Fact No. 4 that may attempt to make the claimant's high blood pressure part of the

compensable injury is reversed and a decision is rendered that the claimant's high blood pressure is not part of his compensable injury of _____.

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge